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No. 90-754

In The

Supreme Court of the United States

October Term, 1990

CALVIN J. PERKINS,

Petitioner,

v.

THE FARM CREDIT BANK OF WICHITA, CHERYL CLASS-ERICKSON, RODNEY CLASS-ERICKSON AND KATHERINE WUNDERLICH,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Petitioner Calvin J. Perkins files this Reply Brief in support of his Petition for Certiorari pursuant to Supreme Court Rule 15.6 to address three new arguments first raised by Respondent Farm Credit Bank of Wichita (hereinafter "FCB") in its Brief in Opposition to Mr. Perkins' Petition for Certiorari (hereinafter "FCB's Brief").

FCB claims at page 2 of its Brief that Mr. Perkins' "intended conclusion" that Pub.L. 100-233, the Agricultural Credit Act of 1987 (hereinafter "the Act"), is "primarily" a farmer's rights act constitutes a misstatement of fact. Unfortunately, FCB has chosen to rely on an inaccurate quotation to the Act's preamble, which substantially distorts the preamble's meaning, in support of this accusation.

As quoted by FCB, the Act's preamble reads in pertinent part:

> "An Act to provide credit assistance to farmers to strengthen the Farm Credit System . . . "

FCB's Brief, p.2.

Thus, as quoted, it appears that credit assistance is provided to farmers only for the purpose of strengthening the Farm Credit System. However, the actual preamble states that the purposes of the Act are:

> "[t]o provide credit assistance to farmers, to strengthen the Farm Credit System . . . "

101 Stat. 1568 (emphasis added).

Thus, contrary to the representations contained in FCB's Brief, Congress explicitly stated in the preamble to Pub. L. 100-233 that providing credit assistance to farmers was a separate purpose of the Act; such assistance was not provided merely for the purpose of strengthening the Farm Credit System.

FCB also asserts that Mr. Perkins could have exercised his right of redemption merely by paying the amount bid for each tract at the sheriff's foreclosure sale. FCB's Brief, p. 3. This assertion is inaccurate. In order to

exercise his right of redemption under Colorado law, Mr. Perkins would not only have had to pay the amount bid at the foreclosure sale, but also any post-judgment interest, taxes paid, and any "other proper charges as now required by law" (which charges would have included FCB's attorney fees). C.R.S. § 38-39-102(1) and (2)(a) (App. A, app. 1). FCB is correct that in this case the amount bid at the foreclosure sale to acquire certificates of purchase to Parcels IV and IX of Mr. Perkins' land, plus the water rights, was necessarily less than the debt owed FCB by Mr. Perkins because his land was sold in parcels. However, Mr. Perkins was harmed by FCB's failure to afford him his right of first refusal provided in 12 U.S.C. § 2219a because he was not given the opportunity to reacquire his land at its appraised value or less as required by the Act.

Finally, FCB's contention that the statements contained in Mr. Perkins' Petition for Certiorari as to the key parcel of his land and the availability of financing were mere unproven allegations in his original complaint, FCB's Brief, pp. 3-4, is somewhat misleading. Mr. Perkins filed his own affidavit in opposition to FCB's Motion for Summary Judgment stating that the parcel transferred to Ms. Wunderlich was the headquarters of his ranching operation. (App. B, app. 3, 5). He also filed an affidavit from Dr. Jacobs stating that Dr. Jacobs would have been seriously interested in assisting him in reacquiring the headquarters to his ranching operation had FCB offered him a right of first refusal in the Spring of 1989. (App. C, app. 7-8). FCB filed no affidavits or other documents with the district court showing that there was a genuine

dispute of material fact as tc these statements. It is therefore difficult to see upon what basis FCB has accused Mr. Perkins of misstating the facts concerning the key parcel to his land and the availability of financing.

Respectfully submitted,

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APPENDIX A

§ 38-39-102. Redemption within specified period – procedure

(1) Except as provided in this section with respect to agricultural real estate or, from July 1, 1987, until January 31, 1989, with respect to an agricultural residence as provided in section 38-39-102.5, within seventy-five days after the date of the sale of real estate by virtue of any foreclosure of a mortgage, trust deed, or other lien or by virtue of an execution and levy, the owner of the premises or any person who might be liable upon a deficiency may redeem the premises sold by paying to the public trustee, sheriff, or other proper officer the sum for which the property was sold, with interest from the date of sale at the default rate if specified in the original instrument or, if not so specified, at the regular rate specified in the original instrument, together with any taxes paid or other proper charges as now provided by law, and a certificate of redemption shall be executed by the proper officer and recorded, and the public trustee, sheriff, or other proper officer shall forthwith pay said money to the holder of the certificate of purchase. If the owner of the premises fails to redeem under this section, any person who might be liable upon a deficiency who redeems under this section shall be issued a certificate of redemption only after the expiration of the proper redemption period.

(2)(a) In the case of any mortgage or deed of trust upon one or more parcels of real estate, all of which were agricultural real estate both upon the date of recording of such mortgage or deed of trust and on the date of the

foreclosure sale, the period within which the owner of the premises or any person who might be liable upon a deficiency may redeem the premises sold is six months.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Case No. 89-C-2034

CALVIN J. PERKINS,

Plaintiff,

v.

FARM CREDIT BANK OF WICHITA, fka The Federal Land Bank of Wichita, a body corporate and federally chartered instrumentality of the United States organized pursuant to 12 U.S.C. Section 2011; and KATHERINE A. WUNDERLICH and RODNEY C. CLASS-ERICKSON and CHERYL L. CLASS-ERICKSON, assignees of the Farm Credit Bank of Wichita,

Defendants.

AFFIDAVIT OF CALVIN J. PERKINS
(Filed March 2, 1990)

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

I, Calvin J. Perkins, being of lawful age do hereby attest as follows:

1. My name is Calvin J. Perkins and I am a Plaintiff in Perkins v. Farm Credit Bank of Wichita, et al, Case No. 89-C-2034.

2. I purchased approximately 26,000 acres of agricultural real estate in Archuleta County, Colorado in 1959 to continue a large livestock ranch which was previously owned by my uncles. In 1970 I sold approximately 16,000

acres to Eaton International Corporation of Phoenix, Arizona which developed its acreage into the luxury subdivision now called Fairfield at Pagosa.

3. My plan during the 1980's was to continue to do business as a rancher but simultaneously develop the remaining land for recreational and residential use. As a result of these plans I became obligated to Defendant Farm Credit Bank's predecessors, farm cooperatives, in which I held shares.

4. By 1984 it became clear to me as well as the farm cooperatives, that the ranching operation in and of itself could not service the farm cooperative debt. Accordingly, with active participation by the farm cooperatives, we agreed to sell the property on an installment basis to a company called Doerring Associates Inc. At the direct suggestion of the farm cooperatives, I carried back the paper necessary to close the Doerring transaction.

5. After the sale, the Securities and Exchange Commission obtained an injunction which caused the Doerring group not to be able to meet its obligations to purchase the property. Accordingly, I again became the owner of all of the property described in Exhibit A to the Complaint.

6. As was well known to the farm cooperatives, I was still unable to meet the debt service on the property and accordingly a foreclosure proceeding was initiated by the farm cooperatives. After an unsuccessful attempt at Chapter 11 reorganization, the property was sold at a

Sheriff's sale on March 28, 1989. My redemption rights did not expire until September 28, 1989.

7. After the foreclosure sale of March 28, 1989, I had serious discussions with my son-in-law, Dr. Murray K. Jacobs of Modesto, California, who was very receptive to loaning money to me in the Spring of 1989, if necessary, to at a minimum reacquire the ranch headquarters property which is known in these proceedings as Parcel IV. Dr. Jacobs was also interested in financing other reacquisitions depending upon the dollar amount required.

8. It was my understanding during the Spring of 1989 that federal law required the Farm Credit Bank of Wichita to let me know if it was going to sell its interest in the foreclosed upon property so I could have the first opportunity to pay it back.

9. Had I been provided notice and an opportunity to purchase Parcel IV or Parcel IX either during the redemption period or after the redemption period, I would have made the necessary arrangements with my son-in-law to borrow the amount necessary to make the purchases.

FURTHER AFFIFIANT SAYETH NAUGHT.

/s/ Calvin J. Perkins
Calvin J. Perkins

Subscribed and sworn to before me this 27th day of February, 1990 by Calvin J. Perkins.

Witness my hand and official seal.

My commission expires: 12-02-93

/s/ Jane M. Worthington
JANE M. WORTHINGTON
Notary Public

P.O. Box 4429, Br. #1
Pagosa Springs, CO. 81157

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Case No. 89-C-2034

CALVIN J. PERKINS,

Plaintiff,

v.

FARM CREDIT BANK OF WICHITA, fka The Federal Land Bank of Wichita, a body corporate and federally chartered instrumentality of the United States organized pursuant to 12 U.S.C. Section 2011; and KATHERINE A. WUNDERLICH and RODNEY C. CLASS-ERICKSON and CHERYL L. CLASS-ERICKSON, assignees of the Farm Credit Bank of Wichita,

Defendants.

AFFIDAVIT OF DR. MURRAY K. JACOBS

STATE OF CALIFORNIA)
) ss.
COUNTY OF STANISLAUS)

I, Dr. Murray K. Jacobs of 1213 Coffee Road, Suite Q, Modesto, California 95355, being of lawful age do hereby attest as follows:

1. My name is Dr. Murray K. Jacobs and I am the son-in-law of Calvin J. Perkins who is the Plaintiff in the above captioned case.

2. In the Spring of 1989, after my father-in-law lost his land, he spoke to me about financing reacquisition of key parcels.

3. During the Spring of 1989 and thereafter to the present time, I have been in a financial position to assist my father-in-law in reacquiring certain parcels of the ranch land he previously owned.

4. Had my father-in-law been give notice and an opportunity to reacquire his headquarters property, including water rights, known as Parcel IV in this case, for $134,179.84, I would have been seriously interested in assisting him in the reacquisition.

5. I also would have been interested in assisting my father-in-law with regard to other parcels, depending on the amount required. For example, had there been notice and opportunity to reacquire Parcel IX for $28,415.81, I would have been seriously interested.

FURTHER AFFIFIANT SAYTH NAUGHT.

/s/ Murray K. Jacobs
Dr. Murray K. Jacobs

Subscribed and sworn to before me this 22 day of February, 1990, by Dr. Murray K. Jacobs.

Witness my hand and official seal.

My commission expires: February 24, 1993

SEAL

/s/ Joe F. M. Venture
Notary Public